FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 818

HELEN E. FARMAKIS,

Petitioner,

vs.

ELEANOR T. FARMAKIS AND UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

DAVID REIN,
Counsel for Petitioner.

INDEX

Subject Index

Table of Cases Cited

Statutes Cited

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 818

HELEN E. FARMAKIS,

Petitioner,

vs.

ELEANOR T. FARMAKIS AND UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Helen E. Farmakis prays that a writ of certiorari issue to review a decision of the United States Court of Appeals for the District of Columbia Circuit rendered January 31, 1949, which decision affirmed the judgment of the District Court of the United States for the District of Columbia that the respondent Eleanor Farmakis recover from the United States of America, the proceeds of a National Service Life Insurance policy, and that the petitioner Helen Farmakis recover nothing from said proceeds.

Opinion Below

The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported at 172 F. (2d) 291.

Summary Statement of Matter Involved

On February 18, 1943, while in the active military service of the United States, John James Constantine Farmakis, herein called the insured, applied for and was granted, effective February 18, 1943, a $10,000 policy of National Service Life Insurance, in which he designated Miss Helen Farmakis, his sister, herein called the petitioner, as principal beneficiary. On October 5, 1943, the insured married Eleanor Burnolt Farmakis, herein called the respondent. On April 10, 1945, the insured was killed in an airplane accident at Bartow Field, Florida, while the policy of insurance was in full force and effect (R. 13-14).

After his marriage to the respondent the insured told the respondent that he would have his insurance changed, to make the respondent the principal beneficiary, and upon arriving at Bartow Field, Florida, he informed her that he had changed his insurance to make her the beneficiary (R. 25-26).

At the trial, the respondent failed to introduce any document showing the change of beneficiary. The respondent introduced the following documents:

(1) An undated "AAF Personal Affairs Statement" (R. 34-36), which stated that the principal beneficiary of the insured's life insurance policy was the respondent. The bottom of this form contains the following:

> Instructions. AAF Personal Affairs Statement is not to be used, either as a substitute for, or in lieu of, authorized forms or established procedures for effecting desired Personal Affairs actions. The purpose of this form is to provide a consolidated record of all

Personal Affairs actions taken by previous accomplishment of official forms. Accordingly, prior to signing this statement, any action desired will be accomplished in the prescribed official manner.

(2) An "Officers Personal Questionnaire" executed by the insured on January 15, 1945, which stated that the beneficiary of the insurance policy was the respondent (R. 36-37).

(3) Two WDAGO Forms No. 41, executed June 8, 1944, and September 8, 1944, designating the appellee as the beneficiary of a six months' gratuity pay in case of death. These forms carry across the head the statement (R. 38-39, 41-42):

IMPORTANT: THIS FORM DOES NOT PERTAIN TO INSURANCE

(4) Statements of James E. Rice and Robert L. Matthews, admitted over the objection of the petitioner, that they constituted hearsay and were mere conclusions (R. 43-45). The gist of these statements were that the insured had indicated to these men that his wife was the beneficiary of his insurance policy.

It was stipulated at the hearing that a search of the records of the Veterans Administration and the War Department has failed to reveal any evidence of a change of beneficiary on the printed forms supplied by the Veterans Administration for that purpose (R. 14). Further the War Department certified that a search of the records was made and "no record has been found of a designation or change of designation of beneficiary for National Life Insurance executed by" the insured (R. 40).

The petitioner filed claim for the insurance with the Veterans Administration, and payment was authorized to her by the Veterans Administration on August 17, 1945. Thereafter, the respondent filed a claim with the Veterans Administration and payments to the petitioner were tempo-

rarily stopped. On or about October 23, 1946, the Veterans Administration, finding that the respondent's claim of change of beneficiary was not supported by any evidence of a designated change in beneficiary in writing, as required by the regulations of the Veterans Administration,[1] rejected the claim of the respondent and resumed payments to the petitioner. Payments to the petitioner were again stopped on the filing of the suit herein by the respondent (R. 14).

A complaint was filed by the respondent on February 11, 1947, alleging that the respondent was the duly designated beneficiary of the insurance. On motion of the United States, the petitioner was joined as a party defendant, and on April 14, 1947, the petitioner filed an answer and cross-claim, in which the petitioner denied that the respondent was the duly designated beneficiary. The petitioner asked that judgment for the proceeds of the insurance be entered in her favor, and that 10% of the sum for which judgment was entered be paid to her attorneys as reasonable attorney's fees.

The trial was held on November 5, 1947, before Justice Bailey without a jury. On December 23, 1947, Justice Bailey filed an opinion in which he found for respondent (R. 9-10).

Findings of fact, conclusions of law and judgment were entered on February 5, 1948 (R. 10-13).

On appeal, the Court of Appeals for the District of Columbia Circuit, although disagreeing with the reasoning of the District Court, affirmed the judgment, in an opinion dated January 31, 1949, 172 F. (2d) 291. A petition for rehearing was denied on March 3, 1949.

---

[1] 38 Code Fed. Reg. § 10.3447 (Cum. Supp.) 7 Fed. Reg. 8364 (1942), as amended, 38 Code Fed. Reg. § 10.3447 (Supp. 1946), 11 Fed. Reg. 9283 (1946).

Statutes Involved

U. S. C., Title 38, § 445.

In the event of disagreement as to claim, . . . under a contract of insurance between the Veterans Administration and any person or persons claiming thereunder an action on the claim may be brought against the United States in the District Court of the United States for the District of Columbia . . . and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. . . . All persons having or claiming to have an interest in such insurance may be made parties to such suit.

Questions Presented

1. May a change in beneficiary under National Service Life Insurance policy be effectuated without compliance with the regulations of the Veterans Administration?

2. May a change in beneficiary under a National Service Life Insurance policy be held to have been effectuated in the absence of any evidence that the insured ever took an affirmative step to effectuate such change?

Reasons for Granting the Writ

The writ should be granted because: (1) the issues involved have not heretofore been determined by this Court; (2) there is a conflict in decisions among the Circuits; (3) the decision below rejected the decision and regulations of the Veterans Administration, but failed to substitute therefore any guiding principle of law upon the basis of which the Veterans Administration may decide when a change of beneficiary has been effectuated. The lack of such a guiding principle has given rise to and will continue to give rise to considerable confusion and extensive litigation until this issue is definitely decided by this Court.

The litigated cases and the files of the Veterans Administration indicate that the present situation is a very common one. The set of facts presents a stock situation. The insured, while still unmarried, takes out an insurance policy and designates as beneficiary his mother, father, or sister, etc. He subsequently marries, and then following his death, his widow claims that he changed his designation of beneficiary to name her. The issue then is what proof is necessary to support this claim. This situation has given rise to an extensive volume of litigation.[2]

The sum involved in these cases amounts usually to $10,000. To the litigants, who are not generally well-to-do people, the sum is a large one and of considerable significance. The failure of the district and circuit courts to agree upon a uniform rule for the determination of these cases, and the rejection by many of them of the regulations of the Veterans Administration constitutes an open invitation for litigation on the subject. The end result is that, although the deceased veteran has left this sum to care for his near relative—perhaps his mother, or his sister, or his widow—the necessary controversy arising from the failure of the courts to enunciate a clear rule results in extensive

---

[2] For some of the cases involving this stock situation which have appeared in the reports, see *Bradley* v. *United States*, 143 F. (2d) 573, cert. den. 323 U. S. 793; *Cohn* v. *Cohn*, 171 F. (2d) 828, cert. den., April 25, 1949; *Collins* v. *United States*, 161 F. (2d) 64; *Cotter* v. *United States*, 78 F. Supp. 495; *Egleston* v. *United States*, 71 F. Supp. 114, aff'd, 168 F. (2d) 67; *Flood* v. *United States*, 78 F. Supp. 420; *Gann* v. *Meek*, 165 F. (2d) 857; *Hartman v. U. S.*, 78 F. Supp. 227; *McKewen* v. *McKewen* 165 F. (2d) 261; *Mikeska* v. *United States*, 171 F. (2d) 153; *Mitchell* v. *U. S.*, 165 F. (2d) 758; *Ramsay* v. *United States*, 72 F. Supp. 613; *Roberts* v. *United States*, 157 F. (2d) 906, cert. den. 330 U. S. 829; *Rosenschein* v. *Citron*, 169 F. (2d) 885, *Rutledge* v. *United States*, 72 F. Supp. 352; *Senato* v. *United States*, 78 F. Supp. 536; *Shannon* v. *United States*, 78 F. Supp. 263; *Shapiro* v. *United States*, 166 F. (2d) 460; *Van Doren* v. *U. S.*, 68 F. Supp. 222; *Vaughn* v. *United States*, 78 F. Supp. 494; *Walker* v. *U. S.*, 70 F. Supp. 422; *Woods* v. *U. S.*, 69 F. Supp. 760. There are a multitude of other cases which have not been reported and are still pending.

litigations, trials and appeals, and eats up a goodly portion of the insurance money which then never reaches any of the contesting beneficiaries. This is clearly a situation which calls for intervention of this Court, which alone can set down a guiding principle and help put an end to this flood of litigation which in justice to all parties should be settled at the administrative level and thus save intact the corpus of the insurance money for the beneficiaries, who are mostly persons in low-income groups.

In *Bradley* v. *United States*, 143 F. (2d) 573 (C. C. A. 10, 1944), cert. den. 323 U. S. 793, the 10th Circuit laid down the following principles of law:

> (1) . . . the burden is upon the widow who claims as a substituted beneficiary to show that the insured during his lifetime effected a valid change of beneficiary from his mother to her (at p. 576).
>
> (2) . . . [the] expressed intention of the insured to change the beneficiary, standing alone and unaccompanied by some affirmative act, having for its purpose the effectuation of his intention, is insufficient to effect a change of beneficiary and the Courts cannot act when he has not first attempted to act for himself (at p. 576).

Relying on the principle of the *Bradley* case, and the language of its own regulations, the Veterans Administration, after reviewing all the evidence presented by the respondent, Eleanor Farmakis, ruled that she had not sustained her burden of proof that a change in beneficiary had been effectuated, and held that the proceeds of the policy should be paid to the petitioner, the designated beneficiary on the records of the Veterans Administration. The District Court and the Court of Appeals disagreed with the Veterans Administration. The District Court found that the change of beneficiary was effectuated when the insured executed the designation of beneficiary on a paper which, on its face,

was a designation for a six months' gratuity, and which bore in large capital letters the statement: "*Important: This form does not pertain to insurance.*" There was, however, no evidence to support this erroneous finding of the District Court.

The Court of Appeals below, although affirming the District Court, rejected its erroneous reasoning and adopted instead a different ground for the result. The Court of Appeals below relied on an "AAF Personal Affairs Statement" in which the insured recorded that his wife, the respondent, was the beneficiary of the insurance. This form relied on by the appellate court carries the following instructions on its face:

> Instructions. AAF Personal Affairs Statement is not to be used, either as a substitute for, or in lieu of, authorized forms or established procedures for effecting desired Personal Affairs actions. The purpose of this form is to provide a consolidated record of all Personal Affairs actions taken by previous accomplishment of official forms. Accordingly prior to signing this statement, any action desired will be accomplished in the prescribed official manner.

In the *Bradley* case, the court had precisely the same evidence before it and rejected it. In that case also the insured had left a confidential personal report which stated that his wife was the beneficiary of the insurance policy. The court said (at p. 574):

> There is nothing in the confidential report . . . from which it can be legitimately inferred that it was intended for the use and information of the Veterans' Administration or that its purpose was to effect a change of beneficiary under the life insurance policy. . . . It is not a notice of any kind; it is not a direction that the name of the beneficiary be changed; and does not express or indicate either indirectly or inaptly a desire to have the beneficiary changed. Indeed, it is

> not a voluntary expression of any such desire, or intention. *At most it indicates a belief or understanding that his wife was the then present beneficiary.* When given its most liberal construction in the light of all the facts and circumstances, we are convinced that it cannot be treated as an effectuation of the insured's intention to change his beneficiary. [Emphasis added.]

The decision below is also in conflict with the decision of the same court in the case of *Cohn* v. *Cohn*, 171 F. (2d) 828, cert. den., April 25, 1949. The Court there said:

> The regulations of the Veterans Administration requires that a change in the named beneficiary of a National Service Life Insurance policy be evidenced in writing. While the courts have often held that no particular form is necessary for that writing, the requirement that there be a writing is the minimum necessary to protect the public, the families and loved ones of servicemen and the interests of the deceased insured veterans themselves against unmitigated fraud. Not only is the requirement reasonable, but is necessary (at p. 829).
>
> All these circumstances create an atmosphere which illustrates the necessity that any change in the formally designated beneficiaries of these policies be evidenced by some unmistakable proof that the decedent did actually make the change. The reasonable and, in our view, necessary proof is a writing, which, if not currently existing, should be proved by the well-established rules for making such proof (at p. 830).

Some of the cases cited in footnote 2, *supra*, follow the clear rule as enunciated in the *Bradley* case. Others, including that of the court below, reject the regulation of the Veterans Administration, but unfortunately, as the court below did, they substitute no clear rule or guiding principle for future cases. It is clear from these cases that the program of veterans insurance can be efficiently and effectively

administered only if the rule set out in the regulations of the Veterans Administration and enunciated in the *Bradley* case is adopted by the courts. To handle the cases, as did the Court below, without any rule or guiding principle at all can produce only confusion and endless litigation. The interests of efficient operation of the veterans insurance program require that this Court grant the writ of certiorari.

Respectfully submitted,

DAVID REIN,
GREENBERG, FORER & REIN,
1105 K Street, N. W.,
Washington 5, D. C.,
Attorney for Petitioner.

(2592)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 818

HELEN E. FARMAKIS,

Petitioner,

vs.

ELEANOR T. FARMAKIS AND UNITED STATES OF AMERICA,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT, ELEANOR T. FARMAKIS, IN OPPOSITION

WARREN E. MILLER and
DAVID S. ALLSHOUSE,
Attorneys for Respondent,
Eleanor T. Farmakis.

INDEX

Subject Index

Table of Cases Cited

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 818

HELEN E. FARMAKIS,

Petitioner,

vs.

ELEANOR T. FARMAKIS AND UNITED STATES OF AMERICA,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT, ELEANOR T. FARMAKIS, IN OPPOSITION

Summary of Argument

The verdict of the trial court was amply supported by the evidence which showed that insured intended to change the beneficiary of his insurance to respondent and that he performed the requisite affirmative act to give effect to his intention. The Circuit Court of Appeals, therefore, properly affirmed (172 F. (2d) 291).

Argument

This case involves no question of law. It presents only a question of whether or not the evidence produced at the trial before the court, sitting without a jury, was sufficient to justify the verdict. Both the District Court and the court below were of the opinion that the evidence clearly showed that this respondent adequately met the burden of meeting the requirements of showing an intention on the part of the insured to change the beneficiary of his insurance and sufficient affirmative action to give effect to this intention.[1]

The evidence of the insured's intention to change the beneficiary and of the affirmative action is overwhelming. The insured told respondent that he was going to make the change and then that he had made it (R. 25-26). He told two former service buddies that he had changed the beneficiary of the insurance to respondent (R. 43-45). He signed an AAF Personal Affairs Statement stating "the beneficiaries designated on my government life insurance are principal—Eleanor T. Farmakis, relationship: wife; amount—$10,000" (R. 34-36). Insured also executed an Officer's Personal Questionnaire in which he stated that Mrs. Eleanor T. Farmakis (respondent) was the beneficiary of his government life insurance (R. 36-37). There was no evidence whatsoever produced by petitioner other than her original designation as beneficiary prior to the marriage of insured to respondent.

This evidence was more than sufficient to justify a finding that the insured had effectively changed the beneficiary of his insurance even without application of the liberal

---

[1] *Roberts* v. *U. S.*, 157 F. (2d) 906, cert. den. 330 U. S. 829.

interpretation that courts have consistently given cases of this kind since World War I.[2]

Respondents' Argument

Compliance With Veterans' Administration Regulations

The Courts are in agreement that strict compliance with Veterans' Administration regulations is not necessary. Such regulations are regarded as primarily for the protection of insurer and their use to defeat the intent of insured has not been permitted. The fact that war time conditions are involved has been a factor in shaping this policy.[3]

Evidence of Affirmative Act

The evidence of insured's affirmative action is found in the AAF Personal Affairs Statement (R. 34-36) and the Officer's Personal Questionnaire (R. 36-37). This evidence is not required to meet any rigid specifications as to form.[4]

Conflict in Decisions of Circuit Courts of Appeal

A review of Circuit Court decisions will reveal no conflict on basic principles, *viz.*, the necessity of proving intent plus an affirmative act.[5] The difference in the cases have been caused by variations in the facts.

---

[2] *White* v. *U. S.*, 270 U. S. 175, 46 S. Ct. 274, 70 L. Ed. 530; *McKewen* v. *McKewen*, 165 F. (2d) 761, cert. den. 330 U. S. 829; *Mitchell* v. *U. S.*, 165 F. (2d) 758; *Collins* v. *U. S.*, 161 F. (2d) 64, cert. den. 331 U. S. 859; *Gann* v. *Meek*, 165 F. (2d) 857; *Shapiro* v. *U. S.*, 166 F. (2d) 240, cert. den. 334 U. S. 859; *Bradley* v. *U. S.*, 143 F. (2d) 573, cert. den. 323 U. S. 793; *Roberts* v. *U. S., supra.*

[3] *Farley* v. *U. S.*, 291 F. 238; *Bradley* v. *U. S., supra; Gann* v. *Meek, supra; Collins* v. *U. S., supra; McKewen* v. *McKewen, supra; Mitchell* v. *U. S., supra.*

[4] *Supra,* footnote (2).

[5] *Supra, Bradley* v. *U. S., Shapiro* v. *U. S., Mitchell* v. *U. S.*

The *Bradley* case[6] has repeatedly been interpreted by other circuits as consistent with their findings on basic principles but as distinguishable on the facts.[7] It is not in conflict in principle with the instant case. The evidence in the two cases differs however and this is the decisive factor.

Cohn v. *Cohn*, 171 F. (2d) 828, Cert. Den. April 25, 1949, is not in conflict with the decision here. The opinion in each case was written by Circuit Judge Prettyman. The *Cohn* case stands for the principle that a change in the named beneficiary of National Service Life Insurance must be "evidenced in writing" although that writing need not take any particular form. Both the AAF Personal Affairs Statement (R. 34-36) and the Officer's Personal Questionnaire (R. 36-37) meets this requirement.

Importance of Questions

The questions presented by this case are no different and no more compelling than those presented by this Court in numerous other cases where certiorari has been denied.[8]

The United States in its memorandum has expressed a lack of interest in the controversy other than to pay the insurance proceeds to the proper party and takes no position on whether the writ should issue. It would appear therefore that the government does not consider a review would be helpful to the administration of the program of veterans' insurance or other governmental function.

---

[6] *Bradley* v. *U. S.*, *supra*.

[7] *Supra*, *Bradley* v. *U. S.*, *Collins* v. *U. S.*, *Gann* v. *Meek*, *Shapiro* v. *Shapiro*.

[8] *Bradley* v. *U. S.*, 143 F. (2d) 573, cert. den. 323 U. S. 793; *Roberts* v. *U. S.*, 157 F. (2d) 906, cert. den. 330 U. S. 829; *McKewen* v. *McKewen*, 165 F. (2d) 761, cert. den. 330 U. S. 829; *Shapiro* v. *U. S.*, 166 F. (2d) 240, cert. den. 334 U. S. 859; *Cohn* v. *Cohn*, 171 F. (2d) 828, cert. den. April 25, 1949.

Conclusion

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

WARREN E. MILLER,
910 17th Street, N. W.,
Washington, D. C. and
DAVID S. ALLSHOUSE,
910 17th Street, N. W.,
Washington, D. C.,
Attorneys for Respondent,
Eleanor T. Farmakis.

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 818

HELEN E. FARMAKIS

v.

ELEANOR T. FARMAKIS AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES

This case involves a dispute between the petitioner, Helen E. Farmakis, sister of a deceased army officer, and the respondent, Eleanor Burnolt Farmakis, his widow, as to the disposition of the proceeds payable by the Government under a $10,000 life insurance policy issued to the deceased under the National Service Life Insurance Act.

Petitioner filed a claim for the benefits of the policy with the Veterans' Administration, and on August 17, 1945 that agency authorized payment to her. Payments to petitioner were

841327—49